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DOLLAR TREE STORES, INC.

14 UNITED STATES DISTRICT COURT

15 NORTHERN DISTRICT OF CALIFORNIA

16 MIGUEL A. CRUZ, and JOHN D. HANSEN,
17 individually and on behalf of all others
similarly situated,

18 Plaintiffs,

19 v.

20 DOLLAR TREE STORES, INC.,

21 Defendant.

CASE NO. C 07 2050 SC

22 ROBERT RUNNINGS individually, and on
23 behalf of all others similarly situated,

24 Plaintiff,

25 v.

26 DOLLAR TREE STORES, INC.,

27 Defendant.

CASE NO. C 07 04012 SC

**[PROPOSED] ORDER GRANTING
DEFENDANT DOLLAR TREE
STORES, INC.'S MOTION FOR
SUMMARY JUDGMENT
[RUNNINGS]**

JUDGE: Hon. Samuel Conti

COMPLAINTS FILED: April 11, 2007

July 6, 2007

TRIAL DATES: No dates set.

1 The Motion for Summary Judgment filed by Defendant Dollar Tree Stores,
 2 Inc. ("Dollar Tree") as to Plaintiff Robert Runnings ("Runnings") came on regularly for
 3 hearing on _____, 2008 at ____:____.m. before this Court in Courtroom 1,
 4 the Honorable Samuel Conti presiding. Maureen McClain, Kauff, McClain & McGuire
 5 LLP, appeared as attorney for Dollar Tree, and Scott Edward Cole, appeared as attorney
 6 for Runnings.

7 After considering the moving and opposition papers, evidence and
 8 arguments of the parties, and all other matters presented to the Court, the Court finds
 9 that there is no genuine issue as to any material fact and that Dollar Tree is entitled to
 10 summary judgment as a matter of law. Each of Runnings' causes of action against
 11 Dollar Tree has no merit and thus, each is summarily adjudicated in favor of Dollar Tree
 12 as set forth below:

13 1. Runnings' First Cause of Action seeks relief for unfair competition
 14 and unfair business practices. This claim is derived from Runnings' erroneous assertion
 15 that he is a non-exempt employee and can survive only if Runnings were able to prove
 16 that Dollar Tree had violated the California Labor Code or Wage Order as alleged in the
 17 Complaint. However, all those alleged violations are premised on the assumption that
 18 Runnings was a non-exempt employee. Since Runnings is properly classified as an
 19 exempt employee, he cannot establish any such violations and therefore has no basis
 20 on which to pursue this claim. Accordingly, the First Cause of Action should be
 21 adjudicated in Dollar Tree's favor.

22 2. In his Second Cause of Action, Runnings alleges he was improperly
 23 denied overtime compensation; improperly denied compensation for missed meal and
 24 rest periods; and is entitled to waiting time penalties. Since Runnings is an exempt
 25 employee, he is not entitled to overtime compensation or meal and rest breaks. Waiting
 26 time penalties are available only to those who failed to receive all wages due them upon
 27 termination of employment and since Runnings still works for Dollar Tree and has had no
 28 breaks in service for Dollar Tree, as a matter of law, waiting penalties are not available to

1 him. Therefore, the Second Cause of Action should be adjudicated in favor of Dollar
2 Tree.

3 3. The Third Cause of Action, Dollar Tree's alleged failure to provide
4 meal and rest breaks, is premised exclusively upon Runnings' allegations that he is a
5 non-exempt employee. Since Runnings is an exempt employee, this Cause of Action
6 should be adjudicated in Dollar Tree's favor.

7 4. The Fourth Cause of Action alleges that Dollar Tree improperly
8 failed to provide Runnings with accurate wage statements. Since Runnings is an
9 exempt employee, the law does not require that Dollar Tree provide him with an itemized
10 wage statement. Accordingly, Runnings' claims under the Fourth Cause of Action
11 should be denied.

12 **IT IS HEREBY ORDERED THAT** Dollar Tree's Motion for Summary
13 Judgment is GRANTED, and that judgment be entered on Runnings' complaint in favor
14 of Dollar Tree.

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16 DATED: _____

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19 HONORABLE SAMUEL CONTI
20 UNITED STATES DISTRICT JUDGE
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